LIM TECK LEE v. THE COMMISSIONER OF STAMPS

[C. A. (Whyatt C.J., Taylor and Tan Ah Tah JJ.) January 20, 1956]

[Singapore — Civil Appeal No. 8 of 1955]

Stamp Ordinance (Cap. 228), ss. 2 and 21 — Instrument relating to retirement of a partner from a firm — Whether the instrument is a conveyance for sale and therefore chargeable with ad valorem duty.

In this case several persons trading in partnership under the firm name of Lim Teck Lee were registered proprietors of a trade mark. On the retirement of a partner the remaining members of the firm applied for registration of the trade mark in their name. In support of their application they produced an instrument reading: "I, Siow Eng Hua acknowledge receipt of $185,000 in full satisfaction of my share in the capital assets and goodwill of the partnership of Lim Teck Lee. I confirm that as a result of this payment I cease to be a partner in the firm with effect from 31 Dec. 1951 and that the continuing partners are solely entitled to all the assets of the firm including the benefit of all trademarks, goodwill, furniture . . . I acknowledge that as at the date hereof I am indebted to the said partnership firm in $118,000 and I undertake to pay the said sum forthwith." The instrument was stamped as a receipt with 6 cents. The Commissioner of Stamp adjudged it to be chargeable with *ad valorem* duty and this view was affirmed by the High Court. The firm appealed.

Held: (1) in this case as it was clear that the continuing partners retained the whole of the assets of the firm and paid the outgoing partner a sum of money upon the footing that he went out, the transaction was clearly a sale or an agreement for sale of a retiring partner's share to the continuing partners; (2) the instrument in this case was not a mere receipt but was in effect a transfer of the retiring partner's share in the partnership assets to the continuing partners for $185,000 and therefore it was in equity a conveyance for sale and therefore chargeable with *ad valorem* duty.

[**Editorial Note:** The Stamp Ordinance (Cap. 228 of the 1936 Edition) is now incorporated in the Laws of the Colony of Singapore, 1955, as Chapter 170.]

Cases referred to:—

(1) *Macleod v. Inland Revenue Commissioners* (1885), 12 R. (Ct. of Sess.) 1045; 22 Sc. L.R. 674.

(2) *Fleetwood-Hesketh v. Inland Revenue Commissioners* (1936) 1 K.B. 351; 153 L.T. 409.

(3) *Garnett v. Inland Revenue Commissioners* (1899), 81 L.T. 633.

CIVIL APPEAL, Appeal on Adjudication as to Stamp Duty.

C. H. Withers-Payne for the appellants.

H. B. Livingstone (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Whyatt C.J. : —This is an appeal from a judgment of Sir Charles Murray-Aynsley (the then Chief Justice), affirming a decision of the Commissioner of Stamps by which the Commissioner adjudged that an instrument dated the 15th September 1952 relating to the retirement of a partner from the appellant firm was a conveyance on sale or an agreement for sale, of the retiring partner's share in the firm and therefore chargeable with *ad valorem* duty.

Two broad questions are raised in this appeal, first, whether the transaction was, as the appellants contend, a partition of partnership property and not as the respondent contends, a sale or an agreement for sale, of a retiring partner's share to continuing partners; and secondly, if the transaction is a sale or an agreement for sale, of the retiring partner's share, whether the document of the 15th September 1952 is a conveyance on sale within the meaning of section 2 of the Stamp Ordinance, or, alternatively, an agreement for sale within the meaning of section 21 of the Stamp Ordinance, and thus liable to *ad valorem* duty under Article 25 of the Schedule of that Ordinance.

In support of the argument that this was a partition of partnership property, the appellants relied on the Scottish case of *Macleod v. Inland Revenue Commissioners*[1]. In that case two partners, Macleod and Wilson, resolved to dissolve partnership but as Macleod wished to carry on the business whilst Wilson wished to retire, an arrangement was made whereby, instead of selling the partnership property and distributing the nett assets amongst the partners, the assets were divided between the two partners, those necessary for carrying on the business, namely the trading assets, being left in the hands of Macleod, and the other assets which consisted of an investment, being handed over to Wilson. As the trading assets were worth slightly more than the investment, an adjustment was made by paying Wilson £931 in cash. After emphasising that the substance of the transaction was alone to be considered, the Court found that this small payment of cash did not make any difference to the nature of the transaction which was in substance a division of partnership property and not a transfer on sale. The judgment made it clear that the test which distinguishes a partition from a sale is whether a retiring partner gets a portion of the partnership assets in specie or whether he gets paid out in cash. In the present case the retiring partner received cash and nothing else, while continuing partners retained "all the assets" to quote the very words of the document of the 15th September. 1952. It cannot, in my view, be said that partnership property has been divided as between continuing partners and a retiring partner when in fact all the partnership assets are left in specie in the hands of the continuing partners. Therefore I reach the conclusion that this is not a case of partition. On the contrary I think this particular transaction

conforms very closely to the description of a transfer on sale of a partner's interest given by Lord Shand at page 677 of *Macleod's*[1] case :—

"If you have a case in which a partner is to go on with the business, retains the whole assets of the company, and merely gives an obligation to the outgoing partner to pay him a certain sum by instalments upon the footing that he is to go out, ..., the result of that plainly is that, the company's estates remaining the same, the partner remaining in the business is buying out the partner who goes out of it . . . . .".

In the present case, the continuing partners retained the whole of the assets of the firm and paid the outgoing partner a sum of money upon the footing that he went out. Lord Shand thought it was plain that the result of such a transaction was that the continuing partners were buying out the retiring partner; with respect, I think it is plain too.

Having reached the conclusion that this transaction was a sale or an agreement for sale, of a retiring partner's share to the continuing partner, the next question is whether the document of the 15th September 1952 is a conveyance on sale, as defined in section 2 of the Stamp Ordinance, or an agreement for sale, as defined in section 21 of that Ordinance; if the instrument is either of these, it is liable to *ad valorem* duty. I would mention in passing, that no question as to the correctness of the amount of the *ad valorem* duty assessed by the Commissioner was raised in this appeal, assuming that the document is liable to *ad valorem* duty.

It was argued on behalf of the appellants that the document was a mere receipt for the payment of a sum of money and therefore only chargeable with a fixed sum of six cents. In support of this argument the appellants relied on a form in the *Encyclopaedia of Forms & Precedents* which it was said provided a precedent for this document, and also upon a passage at page 549 of *Lindley* on Partnership 11th edition where it is stated that a receipt for money paid to a retiring partner and an acknowledgment by him that he had no more claims on his co-partners, is not chargeable with *ad valorem* duty. The relevant form dealing with the acknowledgment by a retiring partner of a payment for his share in the partnership is to be found at page 531 of the *Encyclopaedia of Forms & Precedents* 2nd edition and page 582 of the 3rd edition. It is significant, however, that the footnote to this form in the 2nd edition stating that it was chargeable as a receipt, was considerably modified in the 3rd edition which was published after the decision in *Fleetwood-Hesketh v. Commissioners of Inland Revenue*[2]. The footnote in the 3rd edition states that whether an ordinary receipt stamp will be sufficient must depend upon the circumstances and the document should be submitted for adjudication in each case. I am not, therefore, deterred by the argument *in terrorem* that if the document in this case is held chargeable with *ad valorem* duty, it will upset existing practice, since it is clear that the learned editor of the *Encyclopaedia of Forms & Precedents* considers that the practice which existed at the time of the 2nd edition has now to be re-considered in the light of the *Fleetwood-Hesketh* case.

With regard to the argument based on the passage in *Lindley*, it is significant that at page 133 of *Alpe* on Stamp Duties (23rd edition) the learned author, after citing the passage verbatim, comments as follows: "If, however, the deed contains provisions capable of passing the property, it would under similar circumstances, come within *Garnett v. Commissioners*[3] " *Garnett's* case was a case where *ad valorem* duty was payable on an equitable assignment of a partner's interest. The question to be determined, therefore, is whether the document of the 15th September 1952 contains provisions capable of passing the retiring partner's equitable interest in the appellant firm. As Maugham L.J. pointed out in *Fleetwood Hesketh v. Commissioners of Inland Revenue*[2] (at page 364), no particular words are required to effect an equitable assignment. The language is immaterial if the meaning is plain. Now in the second paragraph of the document of the 15th September 1952, the retiring partner states that as a result of the payment of $185,000 for his share in the partnership assets, he ceases to be a partner and all the assets of the firm are to belong to the continuing partners. The plain meaning of that statement is that the retiring partner's interest in the partnership assets is transferred to the continuing partners for $185,000. It follows, therefore, that this document is in equity a conveyance on sale and chargeable with *ad valorem* duty.

The alternative view that this document is an agreement for sale under section 21 does not, therefore, arise but as this case may conceivably go to another tribunal, I will state my views on this matter briefly. If there was no conveyance on sale, then there must, in my view, have been an antecedent parole agreement for the sale of the retiring partner's share. This being so, the only question is whether the parties have made a record of all the material terms of the agreement. The document of the 15th September 1952, in my view, does contain a statement of all the material terms of what has been agreed between the parties, namely, the description of the property, the amount of the purchase price and the date of the transfer. As Maugham L.J. stated in *Fleetwood-Hesketh v. Commissioners of Inland Revenue*[2], it is clear both on principle and on authority that an agreement or a memorandum of agreement, containing all the terms, is within section 59 of the

Stamp Act of 1891, even though only one party has signed it. The provisions of section 21 of the Stamp Ordinance are identical with those of section 59 of the Stamp Act 1891 and therefore it follows that this document, being an agreement or memorandum, containing all the terms of the sale is within section 21 and therefore liable to *ad valorem* duty.

For these reasons, in my opinion, the learned Judge was right in holding that this document was chargeable with *ad valorem* duty and this appeal should be dismissed with costs.

Taylor J. :—This is an appeal from a judgment of the High Court dismissing an appeal by way of case stated from a decision of the Commissioner of Stamps. The proceeding was entitled a District Court Appeal but that is merely a matter of listing; the case was never before the District Court.

The facts are simple. [The learned Judge stated the facts as reproduced in the headnote above and continued]. The fundamental principle is this. The Stamp Act taxes instrument, not transactions. If there are two ways of carrying out a transaction and the parties are content with the simpler, they are entitled to carry it out in that way. Whatever instrument they in fact use must be stamped as what it actually is, on a true construction of the document alone but extraneous evidence may be adduced to show, for instance, whether an assignment, was made in pursuance of a sale or of a partition.

I entirely agree with the learned President of the Court that this transaction was, in substance, a sale.

As to the instrument itself, it is clear that a simple receipt was insufficient to effect the purpose and intention of the parties. Without the second paragraph it would not have appeared clearly in writing that Siow had retired. Suppose that he died ten months later and the firm had had a good year. His executors might have said—"True, he had drawn his share up to that date but he was still a partner and we want accounts". The continuing partners needed, and took, the confirmation clause as a safeguard against possible further claims.

If one of two brothers wrote to his father's administratrix:—"Dear Mother, John has paid me the £2,000. From now on, my share belongs to him"—that would be an equitable assignment of his share. This instrument is similar in meaning and effect. I am clearly of opinion that it is an equitable assignment of his share in the firm which, being made on a sale, is stampable *ad valorem*.

This instrument differs in several respects from the one in *Fleetwood-Hesketh's*[2] case which contained the words "purchase price, agreed" and was, therefore, on its face suggestive of an agreement, on or for, sale. Quite possibly an instrument not unlike the one set out above might be held to be a memorandum of agreement but I prefer not to express any opinion as to whether the instrument here in question could be so construed.

I would emphasise that though the instrument is in my view an equitable assignment, I do not imply that the Registrar of Trade Marks was bound to act on it. He is not a trustee. The document, by itself or with other evidence, may or may not have been sufficient for the purpose for which it was adduced. That aspect is not here considered.

I agree that this appeal should be dismissed with costs.

Tan Ah Tah J. :—I have had the advantage of reading the judgment of the learned Chief Justice. I agree with it and do not wish to add anything.

Appeal dismissed.

Solicitors: *Drew & Napier.*

LOUGHRAN v. ARMSTRONG (m.w.)

[C. A. (Whyatt C.J., Taylor and Tan Ah Tah JJ.) January 20, 1956]

[Singapore—Civil Appeal No. 27 of 1955]

Damages—Personal injuries arising from professional negligence—Injuries of a transient character—Pain and suffering and temporary loss of amenity—Compensation.

In this case the appellant performed an operation on the respondent's foot, but instead of improving the foot the operation made it worse. She found that after the operation any side or upward movement of the foot caused her intense pain, there was loss of sensation in one part of her foot whilst other parts were very tender, her ankle used to swell and she limped and was unable to walk properly. After enduring this condition for four months she consulted another doctor and was advised by him to submit to another operation. This was performed and when the foot was opened up, it was discovered that the sural nerve had been severed at the first operation and used for some form of fixation of the ankle. The damaged nerve was joined and a tendon transplantation carried out **ad modum Watson-Jones**. The second operation was successful and in the opinion of the doctor who performed it the respondent should not then suffer any permanent disability as a result of the first operation. In the Court below she was awarded damages of $8,481.50, being $981.50 as special damages and $7,500 as general damages. The appellant admitted liability and the only issue appealed against was the award of $7,500 for general damages.

Held: (1) in this case the compensation to be awarded to the respondent should be limited to pain and suffering and to some temporary loss of amenity following upon the first operation; (2) it is essential that some reasonable relationship should be maintained between damages awarded for grave injuries of a permanent kind and relatively slight injuries of a transient character